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Appl. No.: 09/896,853
Response dated September 25, 2003
Reply to Office action of July 11, 2003

Remarks/Arguments

Favorable consideration and allowance of the instant application is respectfully requested in view of the following remarks.

Claims 11-23 are pending in this application.

The Examiner's rejections, as they pertain to the patentability of the claims, are respectfully traversed.

Claims 11-22 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Pruehs et al. (US 4,898,621). This rejection is again respectfully traversed for the following reasons.

Initially, Applicant would like to note that it is very well settled that a factual determination of anticipation requires the disclosure, in a single reference, of each and every element of the claimed invention, and an Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. See, In re Levy, 17 USPQ2d 1561 (Bd. Pat. App. & Inter. 1990).

With respect to the composition claims, i.e., 11-16 and 22, one of the elements of said claims is water, thereby rendering the composition a liquid. Nowhere does the Pruehs reference disclose that its rinse aid composition is a liquid. Similarly, nowhere does the Pruehs reference disclose the presence of the claimed amount of water in its composition. Since this element of the claimed invention is not disclosed by Pruehs, it cannot serve to anticipate the present invention.

As for the process claims (17-21 and 23), Applicant had previously noted that the process claims involve enhancing the cleaning performance of an aqueous, i.e., liquid, laundry detergent by adding thereto the claimed hydroxy mixed ether. Since Pruehs failed to disclose the claimed elements of the process claims, it was Applicant's position that this reference could thus not anticipate the claimed invention.

In response thereto, the Examiner now asserts that the process required in

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instant claim 17 requires the step of adding a hydroxy mixed ether to a composition. The Examiner, however, is slightly mistaken with regards to his assertion. More particularly, claim 17 requires that the hydroxy mixed ether be added to an aqueous laundry detergent composition, not just any composition in general. Since the Pruehs reference fails to disclose this element of the claimed invention, it cannot serve to anticipate said invention.

Accordingly, for all of the above-stated reasons, reconsideration and withdrawal of this rejection is respectfully requested.

Claims 11-14 remain rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 12-14 of copending Application No. 10/257,853. This rejection is again respectfully traversed for the following reasons.

Initially, Applicant would like to note that it does not appear as though the Examiner has addressed Applicant's prior arguments with regards to the obviousness-type double patenting rejection.

Nevertheless, Applicant would like to note that it is well settled that in order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure [underline emphases added].

See, *Manual of Patent Examining Procedure*, Rev. 3, July 1997, section 2142, pages 2100-108. The claimed product is an aqueous laundry detergent. The product of the

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'853 reference, on the other hand, is a laundry detergent contained in either a water-insoluble or water-soluble sack. The sack component of the '853 product is clearly a necessary component of its invention. Nowhere within the '853 reference is it either taught or suggested that its composition is an aqueous, i.e., liquid composition, nor is the claimed amount of water present in the composition either taught or suggested.

Moreover, the requirement of a sack component, whether it be water-soluble or insoluble, serves as a teaching away from the claimed aqueous laundry detergent of the present invention since the required sack could not be used in combination with the claimed invention. This being the case, Applicant would like to note that it is well settled that one important indicium of non-obviousness is the teaching away from the claimed invention by the prior art. See, *In re Braat*, 16 USPQ2d, 1812 (Fed. Cir. 1990). As a result, Applicant respectfully submits that rather than render the claimed invention *prima facie* obvious, the '853 reference teaches away therefrom.

Accordingly, for all of the above-stated reasons, reconsideration and withdrawal of this rejection is respectfully requested.

Claims 11-23 are rejected under 35 U.S.C. § 102(b) as being anticipated by Schmid et al., (DE 19738866). This rejection is respectfully traversed for the following reasons.

Once again, Applicant would like to note that it is very well settled that a factual determination of anticipation requires the disclosure, in a single reference, of each and every element of the claimed invention, and an Examiner must identify wherein each and every facet of the claimed invention is disclosed in the applied reference. See, *In re Levy*, 17 USPQ2d 1561 (Bd. Pat. App. & Inter. 1990).

With respect to the composition claims, i.e., 11-16 and 22, one of the elements of said claims is water, thereby rendering the composition a liquid. Nowhere does the Schmid reference disclose that its rinse aid composition is a liquid. Similarly, nowhere

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does the Schmid reference disclose the presence of the claimed amount of water in its composition. Since neither of these elements of the claimed invention are disclosed by Pruehs, it cannot serve to anticipate the present invention.

As for the process claims (17-21 and 23), Applicant would again like to note that the process claims involve enhancing the cleaning performance of an aqueous, i.e., liquid, laundry detergent by adding thereto the claimed hydroxy mixed ether. Since Schmid fails to disclose these claimed elements of the process claims, it is Applicant's position that this reference cannot anticipate the claimed invention.

In addition, Applicant would also like to note that claim 17 requires that the hydroxy mixed ether be added to an aqueous laundry detergent composition, not just any composition in general. Since the Schmid reference fails to disclose this element of the claimed invention, it cannot serve to anticipate said invention.

Accordingly, for all of the above-stated reasons, reconsideration and withdrawal of this rejection is respectfully requested.

It is believed that the foregoing reply is completely responsive under 37 CFR 1.111 and that all grounds for rejection are completely avoided and/or overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,


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